IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 718 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LAXMI ASSOCIATES - Petitioner(s)
Versus
COLLECTOR-VADODARA & 1 - Respondent(s)

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Appearance :
MR BA SURTI for the Petitioner.
Mr. Siraj Gori, Assistant Government Pleader for the respondents.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 10/03/2006

ORAL JUDGMENT

Rule. Learned Assistant Government Pleader Mr.Siraj Gori waives service of notice of Rule on behalf of the respondents. The petitioner seeks permission to

take on record the order dated 7th March,2006 passed by the Collector, Vadodara, during the pendency of the petition. The same is taken on the record of the case. The petitioner is challenging this order also.

2. This petition has been preferred mainly because of the order dated 21st November,2005 passed by the Collector, Vadodara (Annexure “H” to the memo of the petition), whereby the application preferred by the petitioner to grant N.A.permission under section 65 of the Bombay Land Revenue Code,1879 (hereinafter referred to as “the Code,1879) has been rejected.

3. Learned advocate for the petitioner submitted that the impugned order dated 21st November,2005 rejecting the application preferred by the petitioner under section 65 of the Bombay Land Revenue Code,1879 and subsequent order dated 7th March,2006 passed thereupon (which is tendered during the course of hearing by the petition), are dehors the facts and law especially section 65 of the Bombay Land Revenue Code,1879 and read with the provisions of The Bombay Prevention of Fragmentation and Consolidation of Holding Act,1947 (hereinafter referred to as “the Act,1947).

4. Learned advocate for the petitioner submitted that initially the land in question was restricted tenure land and, therefore, an application was preferred under section 43 of The Bombay Tenancy and Agricultural Lands Act,1948 (hereinafter referred to as “the Act,1948), whereupon the order dated 18th January,2005 (Annexure “B” to the memo of petition) has been passed by Collector, Vadodara, whereby the restricted tenure land was made transferable. Thus, new tenure land was converted into old tenure land. Necessary amount of premium fixed by the Collector, Vadodara under section 43 of the Act,1948 has also been paid. Subsequently, an application was preferred under section 65 of the Bombay Land Revenue Code,1879 for getting N.A. Permission and the impugned order has been passed by the Collector, Vadodara presuming that there is a breach of provisions of the Act,1947. Learned advocate for the petitioner submitted that when application is preferred under the provisions of section 65 of the Code,1879,Collector cannot assume and exercise powers conferred under another Act,1947. No notice has ever been issued stating that the sale transaction has been entered into is violative of the provisions of the Act,1947. No opportunity of being heard has been given for the alleged breach of the Act,1947 and, therefore, the communication issued by the

Collector, Vadodara dated 21st November,2005 (Annexure “H” to the memo of the petition) as well as the order dated 7th March,2006 passed by the Collector, Vadodara deserves to be quashed and set aside.

5. Learned advocate for the petitioner has also relied upon a decision rendered by this Court in the case of **Evergreen Apartment Co-Operative Housing Society Ltd. V/s. Special Secretary (Appeals), Revenue Department** reported in **1991(1) GLH 155** and pointed out that the powers has been exercised by the Collector, Vadodara under the Bombay Land Revenue Code,1879, keeping in mind, the alleged breach of the provisions of the Act,1947 and it is not permissible as per the aforesaid judgment and therefore also, the impugned order (Annexure “H” to the memo of petition) as well as order dated 7th March,2006 deserves to be quashed and set aside.

6. I have heard the Learned Assistant Government Pleader Mr.Siraj Gori on behalf of the respondents, who has submitted that the order passed by the Collector, Vadodara is true, correct and in consonance with the facts of the case. The petitioner has purchased a fragment of land, which is not permissible under the Act,1947 and, therefore, in view of the provisions of

section 9 of the Act,1947, the said provisions shall be deemed to be void and, therefore, N.A. Permission has not been granted under section 65 of the Code,1879.

7. Having heard the learned counsel for both the sides and looking to the facts and circumstances of the case, in my view, the order dated 21st November,2005 issued by Collector, Vadodara as well as order dated 7th March,2006 passed by the Collector, Vadodara,- which is taken on the record of the case, upon tendering the same by the petitioner, deserve to be quashed and set aside for the following facts and reasons:-

(i) It is not appreciated by the Collector, Vadodara that while exercising powers under Bombay Land Revenue Code,1879, he has also exercised the powers under the provisions of the Act,1947 for the alleged breach of the provisions of the Act,1947.

(ii) Looking to the aforesaid two orders passed by the the Collector, Vadodara it seems that though never any doubt raised by any concerned authority as to the validity of the sale deed and the transaction entered into between the

petitioner and predecessor-in-title under the Act,1947 and, therefore, Collector, Vadodara while exercising the powers under section 65 of the Code,1879 ought not to have presumed alleged breach of the Act,1947.

(iii)Unless and until adequate opportunity of hearing is given to the petitioner under Act,1947 by issuing necessary notice, the breach as per section 9 of the Act,1947 cannot be considered while exercising powers under section 65 of the Code,1879. Both Acts namely Bombay Land Revenue Code,1879 and The Bombay Prevention of Fragmentation and Consolidation of Holding Act,1947 are distinct and separate are the provisions for making them applicable. The authority before passing the order under one Act (in the present case The Code, 1879)some times goes into depth and tries to search out breach of another Act (in present case, breach of provisions of Act,1947), and thereafter, they all are presuming the breach of another Act (which is generally without giving any notice under another Act and is generally without

giving any opportunity of being heard to the applicant) and thereafter they are refusing to exercise their power (which is generally coupled with duty) under the Act under which the application is preferred. Here in this case, the application was under section 65 of Bombay Land Revenue Code, 1879 for getting N.A. Use permission and while deciding that application, Collector, Vadodara, firstly found out breach of the Act, 1947 and thereafter without giving any opportunity, presumed such breach and refused to grant N.A. Use permission under section 65 of the Code, 1879. This action of the Collector, Vadodara is not permissible under the rule of law. He cannot presume the breach of another law (i.e. The Act, 1947), without giving notice and without hearing the applicant (of application under section 65 of the Code, 1879).

It is possible that the same officer (here, he is Collector) can be an authority under several revenue laws. But that permits not, the usage of powers, in combination of any revenue laws. Cross utilisation of power

by revenue officer, under different laws is not permitted. When the application under Bombay Land Revenue Code is given by the applicant, the revenue officer, has to decide it after applying provisions of that very Code, 1879 but while deciding the application under B.L.R.Code, the Officer, cannot exercise powers under the Act, 1947, without giving notice under the Act, 1947 and without giving opportunity of being heard to the applicant. While exercising the powers under one Act (in the present case, provisions of Code,1879), exercise of powers conferred under another Act (i.e. The Act, 1947) is not permitted.

(iv) It has been held by this Court in the case of **Evergreen Apartment Co-Operative Housing Society Ltd. V/s. Special Secretary (Appeals), Revenue Department** reported in **1991(1) GLH 155** especially in para-12 thereof, as under:-

"12. There is much substance in the second submission of Mr.Hawa also. Ordinarily when a transfer of property takes place by a registered account, an entry is effected in the revenue record and it is certified by the Mamalatdar after making necessary

injuries. If there is any dispute regarding mutation, the dispute has to be entered in the register of the disputed cases and then such disputes are to be disposed of by the Mamlatdar. Under sub-rule (5) of Rule 108 of the Rules, the aggrieved party can prefer an appeal within 60 days from the date of the service of the order. The State Government has power to call for and examine the record of any enquiry or the proceedings of any subordinate revenue officer and to review the same under sub-rule (6) of the rules. It is to be noted in the present case that no appeal had been presented within 60 days from the date of Mamlatdar's order certifying the initial entry. The Assistant Collector, Surat took the said entry in suo motu revision, even though he had no such power under the provisions of Rule 108. It, therefore, appears that the Additional Chief Secretary, Revenue Department remanded the proceeding to the Collector for treating the same as an appeal. This was done after a period of 4 years after the certification of the entry. It was only the State Government which had the power to call for a record of inquiry or proceeding under sub-rule (6) of Rule 108. Even the State Government was empowered to satisfy itself "as to the regularity of such proceedings and as to the legality or propriety of any decision or order passed in such proceedings." So the entire inquiry and revisional power has to proceed under the Bombay Land Revenue Rules and not under any enactments like the Bombay Tenancy and Agricultural Lands Act, Urban Land (Ceiling and Regulations) Act or Bombay Prevention of Fragmentation and Consolidation of Holdings Act. It is quite possible that an officer of the Revenue Department may be occupying different capacities under different enactments. That, however, would not empower him to exercise any powers under one enactment while proceeding under another enactment. So far as the proceedings under Rule 108 of the Rules, popularly known as RTS proceedings, are concerned, it is well settled that the entires made in the revenue records have primarily a fiscal value and they do not

create any title. Such mutations have to follow either the documents of title or the orders passed by competent authorities under special enactments. Independently the Revenue Authorities, as mentioned in Rule 108 of the Rules, cannot pass orders of cancelling the entires on an assumption that the transaction recorded in the entry are against the provisions of a particular enactment. Whether the transaction is valid or not has to be examined by the competent authority under the particular enactment by following the procedure prescribed therein and by giving an opportunity of hearing to the concerned parties likely to be affected by any order that may be passed. Thus on this second ground also the orders of the Collector and the Additional Chief Secretary appear to be beyond their jurisdiction. The Additional Chief Secretary has held that the sale by auction was not consistent with the provisions of Section 27 of the Urban Land (Ceiling and Regulation) Act. Section 27 relates to prohibition of transfer of any urban land with a building thereon. Apart from legal position that Section 27 has been struck down as ultra vires, it is quite obvious that no such question of transferring urban land with a building thereon has ever arisen in the present case. Thus, the order of the revisional authority has proceeded on a misconception of relevant legal provisions also."

In view of the aforesaid decision, powers exercised by the collector, Vadodara in the communication dated 21st November,2005 read with the order dated 7th March,2006 passed by Collector, Vadodara deserves to be quashed and set aside.

(v) It is an admitted fact that the Collector

has not issued notice till today under the provisions of Act,1947 and, therefore, the impugned orders deserves to be quashed and set aside, mainly and chiefly for the reason that while passing the order under B.L.R. Code, 1879, the Collector has interwoven the breach of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. Before throwing the petitioner at the speculation of breach of the Act, 1947, the rule of law requires, notice for alleged breach under another Act (be it ULC Act or the Act, 1947 or the Bombay Tenancy and Agricultural Lands Act,1948 or the like) and hearing under that Act. In the facts of the present case, there is no notice, no hearing for the alleged breach of section 9 of the Act, 1947 therefore, it cannot be a reason, as given by the Collector, for refusal of N.A. Use permission under section 65 of the Code, 1879.

8. As a cumulative effect of the aforesaid facts, reasons and judicial pronouncement, I hereby quash and set aside the orders dated 21st November,2005 as well as dated 7th March,2006 passed by Collector, Vadodara. The

Collector, Vadodara is hereby directed to decide the application preferred by the petitioner under section 65 of the Code, 1879, afresh, after giving an opportunity of being heard to the petitioner, keeping in mind, the aforesaid observations and the judicial pronouncement. So far as communication dated 21st November,2005 (at Annexure “H” to the memo of petition) is concerned, as per the petitioner, he is ready to comply with the first two objections. So far as the third objection is concerned, during the pendency of the petition, the order dated 7th March, 2006 has been passed. The said order dated 7th March, 2006 passed by the Collector, Vadodara during the pendency of this petition is also hereby quashed and set aside with a direction to decide afresh the application of the petitioner after giving an opportunity of hearing to the petitioner. Rule made absolute to the aforesaid extent.

(D.N.PATEL,J)

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